

HOUSE BILL NO. 370

INTRODUCED BY NOENNIG, BOHLINGER, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "MINOR SUBDIVISION"; DEFINING "ORIGINAL TRACT OF RECORD"; CLARIFYING THE REVIEW PROCEDURE FOR THE FIRST MINOR SUBDIVISION; REVISING THE REVIEW PROCEDURE FOR SUBSEQUENT MINOR SUBDIVISIONS; ELIMINATING REDUNDANT PROVISIONS; AMENDING SECTIONS 76-3-103, 76-3-504, 76-3-601, 76-3-603, 76-3-605, 76-3-608, 76-3-609, AND 76-3-620, MCA; REPEALING SECTION 76-3-505, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) (a) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

(b) The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to

1 review surveys and plats submitted for filing.

2 (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be
3 prepared for filing for record with the county clerk and recorder and containing all elements and requirements
4 set forth in this chapter and in regulations adopted pursuant to this chapter.

5 (7) "Governing body" means a board of county commissioners or the governing authority of a city or
6 town organized pursuant to law.

7 (8) "Immediate family" means a spouse, children by blood or adoption, and parents.

8 (9) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United
9 States government survey section or a United States government lot, the boundaries or areas of which cannot
10 be determined without a survey or trigonometric calculation.

11 (10) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of land and RECORD.

12 (11) "Original tract of record" means the tract of record from which the first subdivision was approved
13 pursuant to this chapter.

14 ~~(10)~~(12) "Planned unit development" means a land development project consisting of residential
15 clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses
16 built in a prearranged relationship to each other and having open space and community facilities in common
17 ownership or use.

18 ~~(11)~~(13) "Plat" means a graphical representation of a subdivision showing the division of land into lots,
19 parcels, blocks, streets, alleys, and other divisions and dedications.

20 ~~(12)~~(14) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the
21 layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a
22 governing body.

23 ~~(13)~~(15) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67,
24 to practice surveying in the state of Montana.

25 ~~(14)~~(16) "Registered professional engineer" means a person licensed in conformance with Title 37,
26 chapter 67, to practice engineering in the state of Montana.

27 ~~(15)~~(17) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision
28 of land.

29 ~~(16)~~(18) "Subdivision" means a division of land or land so divided that it creates one or more parcels
30 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States

1 government section, exclusive of public roadways, in order that the title to or possession of the parcels may be
 2 sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium
 3 or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or
 4 mobile homes.

5 ~~(17)~~(19) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be
 6 identified by legal description, independent of any other parcel of land, using documents on file in the records
 7 of the county clerk and recorder's office.

8 (b) Each individual tract of record continues to be an individual parcel of land unless the owner of the
 9 parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

10 (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description
 11 that describes the resulting single parcel and in which the owner expressly declares the owner's intention that
 12 the tracts be merged; or

13 (ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have
 14 been expunged and depicts the boundaries of the larger aggregate parcel.

15 (c) An instrument of conveyance does not merge parcels of land under subsection ~~(17)(b)(i)~~ (19)(b)(i)
 16 unless the instrument states, "This instrument is intended to merge individual parcels of land to form the
 17 aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of
 18 the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."
 19

20 **Section 2.** Section 76-3-504, MCA, is amended to read:

21 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
 22 chapter must, at a minimum:

23 (a) except as provided in 76-3-210, 76-3-509, or 76-3-609~~(3)~~, require the subdivider to submit to the
 24 governing body an environmental assessment as prescribed in 76-3-603;

25 (b) establish procedures consistent with this chapter for the submission and review of subdivision plats;

26 (c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

27 (d) provide for the identification of areas that, because of natural or human-caused hazards, are
 28 unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be
 29 eliminated or overcome by approved construction techniques;

30 (e) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year

1 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

2 (f) prescribe standards for:

3 (i) the design and arrangement of lots, streets, and roads;

4 (ii) grading and drainage;

5 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a

6 minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

7 (iv) the location and installation of utilities;

8 (g) provide procedures for the administration of the park and open-space requirements of this chapter;

9 (h) provide for the review of preliminary plats by affected public utilities and those agencies of local,

10 state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review

11 may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the

12 failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing

13 body.

14 (i) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider

15 to:

16 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be

17 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have

18 a legal right to the water and reserve and sever any remaining surface water rights from the land;

19 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to

20 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement

21 administered through a single entity that specifies administration and the rights and responsibilities of

22 landowners within the subdivision who have a legal right and access to the water; or

23 (iii) reserve and sever all surface water rights from the land;

24 (j) except as provided in this subsection, require the subdivider to establish ditch easements in the

25 subdivision that are in locations of appropriate topographic characteristics and sufficient width; to allow the

26 physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery

27 of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or

28 permit of an irrigation district or other private or public entity formed to provide for the use of the water right on

29 the subdivision lots; are a sufficient distance from the centerline of the ditch to allow for construction, repair,

30 maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation

1 other than grass within the ditch easement without the written permission of the ditch owner. Establishment of
 2 easements pursuant to this subsection (1)(j) is not required if:

3 (i) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
 4 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
 5 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;
 6 or

7 (ii) the water rights are removed or the process has been initiated to remove the water rights from the
 8 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
 9 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
 10 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
 11 document that intent, when applicable, in agreements and legal documents for related sales transactions.

12 (k) require the subdivider, unless otherwise provided for under separate written agreement or filed
 13 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
 14 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision
 15 to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
 16 historic and legal rights;

17 (l) if the governing body has adopted a growth policy pursuant to chapter 1 of this title, be made in
 18 accordance with the goals and objectives established in the growth policy that are within the scope of 76-3-501
 19 within 1 year of adoption of the growth policy;

20 (m) require the subdivider to describe, dimension, and show utility easements in the subdivision on the
 21 final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical
 22 placement and unobstructed maintenance of utility facilities for the provision of utility services within the
 23 subdivision.

24 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted
 25 under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
 26 development."

27

28 **Section 3.** Section 76-3-601, MCA, is amended to read:

29 **"76-3-601. Submission of preliminary plat for review.** (1) ~~Except when a plat is eligible for summary~~
 30 ~~review pursuant to 76-3-505, the~~ The subdivider shall present to the governing body or to the agent or agency

1 designated by the governing body the preliminary plat of the proposed subdivision for local review. The
2 preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

3 (2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the
4 preliminary plat must be submitted to and approved by the city or town governing body.

5 (b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat
6 must be submitted to and approved by the governing body of the county. However, if the proposed subdivision
7 lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class
8 city, the county governing body shall submit the preliminary plat to the city or town governing body or its
9 designated agent for review and comment. If the proposed subdivision is situated within a rural school district,
10 as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat
11 to school district trustees.

12 (c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be
13 submitted to and approved by both the city or town and the county governing bodies.

14 (d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body
15 of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication
16 of hearings, reports, and other requirements whenever possible.

17 (3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the
18 authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

19

20 **Section 4.** Section 76-3-603, MCA, is amended to read:

21 **"76-3-603. Contents of environmental assessment.** When required, the environmental assessment
22 must accompany the preliminary plat and must include:

23 (1) for a major subdivision:

24 (a) a description of every body or stream of surface water that may be affected by the proposed
25 subdivision, together with available ground water information, and a description of the topography, vegetation,
26 and wildlife use within the area of the proposed subdivision;

27 (b) a summary of the probable impacts of the proposed subdivision based on the criteria described in
28 76-3-608; and

29 (c) a community impact report containing a statement of anticipated needs of the proposed subdivision
30 for local services, including education and busing; roads and maintenance; water, sewage, and solid waste

1 facilities; and fire and police protection; and

2 (d) additional relevant and reasonable information related to the applicable regulatory criteria adopted
3 under 76-3-501 as may be required by the governing body;

4 (2) except as provided in 76-3-609~~(3)~~, for a minor subdivision, a summary of the probable impacts of
5 the proposed subdivision based on the criteria described in 76-3-608."
6

7 **Section 5.** Section 76-3-605, MCA, is amended to read:

8 **"76-3-605. Hearing on preliminary plat.** (1) Except as provided in ~~76-3-505~~ 76-3-609, the governing
9 body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all
10 relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if
11 required, to determine whether the plat should be approved, conditionally approved, or disapproved by the
12 governing body.

13 (2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body
14 of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

15 (3) Notice of the hearing must be given by publication in a newspaper of general circulation in the
16 county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and
17 each purchaser under contract for deed of property immediately adjoining the land included in the plat must also
18 be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

19 (4) When a hearing is held by an agent or agency designated by the governing body, the agent or
20 agency shall act in an advisory capacity and recommend to the governing body the approval, conditional
21 approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing
22 not later than 10 days after the public hearing."
23

24 **Section 6.** Section 76-3-608, MCA, is amended to read:

25 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to
26 approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable
27 environmental assessment, public hearing, planning board recommendations, or additional information
28 demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may
29 not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

30 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as

1 applicable.

2 (3) A subdivision proposal must undergo review for the following primary criteria:

3 (a) except when the governing body has established an exemption pursuant to subsection ~~(7)~~ (6) of this
4 section or except as provided in ~~76-3-505 and~~ 76-3-509, the effect on agriculture, agricultural water user
5 facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

6 (b) compliance with:

7 (i) the survey requirements provided for in part 4 of this chapter;

8 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

9 (iii) the local subdivision review procedure provided for in this part;

10 (c) the provision of easements for the location and installation of any planned utilities; and

11 (d) the provision of legal and physical access to each parcel within the subdivision and the required
12 notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

13 (4) The governing body may require the subdivider to design the subdivision to reasonably minimize
14 potentially significant adverse impacts identified through the review required under subsection (3). The governing
15 body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

16 (5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection
17 (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized
18 that in some instances the unmitigated impacts of a proposed development may be unacceptable and will
19 preclude approval of the plat.

20 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider
21 and shall give due weight and consideration to the expressed preference of the subdivider.

22 ~~(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted~~
23 ~~pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt~~
24 ~~from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.~~

25 ~~———— (b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6),~~
26 ~~the growth policy must meet the requirements of 76-1-601.~~

27 ~~(7)(6)~~ The governing body may exempt subdivisions that are entirely within the boundaries of
28 designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have
29 been met:

30 (a) the governing body has adopted a growth policy pursuant to chapter 1 that:

- 1 (i) addresses the criteria in subsection (3)(a);
 2 (ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);
 3 (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a);
 4 and
 5 (iv) identifies one or more geographic areas where the governing body intends to authorize an
 6 exemption from review of the criteria in subsection (3)(a); and
 7 (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:
 8 (i) apply to the entire area subject to the exemption; and
 9 (ii) address the criteria in subsection (3)(a), as described in the growth policy."
 10

11 **Section 7.** Section 76-3-609, MCA, is amended to read:

12 **"76-3-609. Review procedure for minor subdivisions.** ~~Subdivisions containing five or fewer parcels~~
 13 ~~in which proper access to all lots is provided and in which there is not any land to be dedicated to the public for~~
 14 ~~parks or playgrounds are to be reviewed as follows:~~

15 (1) Minor subdivisions must be reviewed as provided in this section.

16 (2) When proper access to all lots is provided, the first minor subdivision from the original tract of record
 17 must be reviewed as follows:

18 (a) The governing body shall approve, conditionally approve, or disapprove the first minor subdivision
 19 from a the original tract of record within 35 working days of the submission of the application.

20 (2) ~~The governing body shall state in writing the conditions that must be met if the subdivision is~~
 21 ~~conditionally approved or what local regulations would not be met by the subdivision if it disapproves the~~
 22 ~~subdivision.~~

23 (3)(b) ~~The following requirements for holding a public hearing and preparing an environmental~~
 24 ~~assessment do not apply to the first minor subdivision created from a the original tract of record.:~~

25 (i) the requirement to prepare an environmental assessment;

26 (ii) the requirement to hold a hearing on the preliminary plat pursuant to 76-3-605; and

27 (iii) if the minor subdivision is proposed within a jurisdictional area that has adopted a growth policy that
 28 meets the requirements of 76-1-601 and the proposed minor subdivision will comply with the growth policy, the
 29 requirement to review the subdivision for the criteria contained in 76-3-608(3)(a).

30 (4)(3) ~~Subsequent~~ Except as provided in subsection (4), subsequent minor subdivisions from a tract

1 of record must be reviewed ~~under 76-3-505 and regulations adopted pursuant to that section~~ as provided in
 2 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

3 (4) (A) The governing body may adopt subdivision regulations that establish requirements for review
 4 of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision,
 5 as provided in subsection (2) and this chapter.

6 (B) A PRELIMINARY PLAT IS NOT REQUIRED TO BE SUBMITTED FOR A MINOR SUBDIVISION IF THE FOLLOWING
 7 REQUIREMENTS ARE MET:

8 (I) PROPER ACCESS TO ALL LOTS IS PROVIDED.

9 (II) NO LAND IN THE SUBDIVISION WILL BE DEDICATED TO PUBLIC USE FOR PARKS OR PLAYGROUNDS.

10 (III) THE PLAT HAS BEEN APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY WHENEVER APPROVAL
 11 IS REQUIRED BY TITLE 76, CHAPTER 4, PART 1."

12

13 **Section 8.** Section 76-3-620, MCA, is amended to read:

14 **"76-3-620. Review requirements -- written statement.** In addition to the requirements of 76-3-604
 15 ~~and 76-3-609~~, a governing body may not deny or condition a subdivision approval under this part unless it
 16 provides a written statement to the applicant detailing the circumstances of the subdivision denial or condition
 17 imposition. The statement must include:

18 (1) the reason for the denial or condition imposition;

19 (2) the evidence that justifies the denial or condition imposition; and

20 (3) information regarding the appeal process for the denial or condition imposition."
 21

21

22 NEW SECTION. Section 9. Repealer. Section 76-3-505, MCA, is repealed.

23

24 NEW SECTION. Section 10. Applicability. [This act] applies to minor subdivisions that are proposed
 25 after [the effective date of this act].

26

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